completely thawed prior to use. Complete pad/twine/fastener assemblies shall be used to sample floor litter surfaces; nest box surfaces may be sampled using 3- by-3-inch sterile gauze pads impregnated with double-strength skim milk as described in paragraph (a)(1) of this section. In either instance, the Plan participant collecting the samples shall wear a fresh pair of disposable sterile gloves for each flock or house sampled. Each sampler bag shall be marked with the type of sample (floor litter or nest box surface) and the identity of the house or flock from which the sample was taken.

(iii) *Floor litter sampling technique.* For flocks with fewer than 500 breeders, at least one DS set (two DS pads) shall be dragged across the floor litter surface for a minimum of 15 minutes. For flocks with 500 or more breeders, a minimum of two DS sets (four DS pads) shall be dragged across the floor litter surface for a minimum of 15 minutes per DS set. Upon completion of dragging, lower each DS pad by its attached twine into a separate, resealable sterile bag. Alternatively, each DS set of two pads may be lowered by its attached twine into the storage/transport bag from which the DS set was originally taken. Remove the twine from the pad or DS set by grasping the pad or DS set through the sides of the bag with one hand while pulling on the twine with the other hand until the connection is broken. Seal the bags and promptly refrigerate them to between 2 and 4 °C. Do not freeze. Discard the twine in an appropriate disposal bag.

(iv) *Nest box sampling technique.* The Plan participant shall collect nest-box samples by using two 3-by-3-inch sterile gauze pads premoistened with double-strength skim milk and wiping the pads over assorted locations in about 10 percent of the total nesting area. Upon completion, place each pad in a separate, resealable sterile bag. Seal the bags and promptly refrigerate them to between 2 and 4 °C. Do not freeze.

(v) *Culturing of litter surface and nest box samples.* When refrigerated to between 2 and 4 °C, pads impregnated with double-strength skim milk may be stored or batched for 5 to 7 days prior to culturing. Pads shipped singly or paired in a single bag shall not be pooled for culturing but shall be separately inoculated into 60 mL of selective enrichment broth.

(b) *For turkeys.* * * *

* * * * *

§ 147.14 [Amended]

18. In § 147.14, paragraph (a)(2)(ii) would be amended by removing the word ''and''; by adding the words '', and colony lift assays'' immediately after the word ''procedures''; and by adding the words ''and paragraph (a)(5)'' immediately after the words ''illustration 2''.

19. In part 147, Subpart B—Bacteriological Examination Procedure, a new § 147.17 would be added to read as follows:

§ 147.17 Laboratory procedure recommended for the bacteriological examination of cull chicks for salmonella.

The laboratory procedure described in this section is recommended for the bacteriological examination of cull chicks from egg-type and meat-type chicken flocks and waterfowl, exhibition poultry, and game bird flocks for salmonella.

(a) From 25 randomly selected 1- to 5-day-old chicks, prepare 5 organ pools, 5 yolk pools, and 5 intestinal tissue pools as follows:

(1) *Organ pool:* From each of five chicks, composite and mince 1- to 2-gram samples of heart, lung, liver, and spleen tissues and the proximal wall of the bursa of Fabricus.

(2) *Yolk pool:* From each of five chicks, composite and mince 1- to 2-gram samples of the unabsorbed yolk sac or, if the yolk sac is essentially absent, the entire yolk stalk remnant.

(3) *Intestinal pool:* From each of five chicks, composite and mince approximately 0.5 cm^2 sections of the crop wall and 5-mm-long sections of the duodenum, cecum, and ileocecal junction.

(b) Transfer each pool to tetrathionate selective enrichment broth (Hajna or Mueller-Kauffmann) at a ratio of 1 part tissue pool to 10 parts broth.

(c) Repeat the steps in paragraphs (a) and (b) of this section for each five-chick group until all 25 chicks have been examined, producing a total of 15 pools (5 organ, 5 yolk, and 5 intestinal).

(d) Culture the 15 tetrathionate pools as outlined for selective enrichment in illustration 2 of § 147.12. Incubate the organ and yolk pools for 24 hours at 37 °C and the intestinal pools at 41.5 °C. Plate as described in illustration 2 of § 147.12 and examine after both 24 and 48 hours of incubation. Confirm suspect colonies as described. Further culture all salmonella-negative tetrathionate broths by delayed secondary enrichment procedures described for environmental, organ, and intestinal samples in illustration 2 of § 147.12. A colony lift assay may also be utilized as a supplement to TSI and LI agar picks of suspect colonies.

§ 147.26 [Amended]

20. In § 147.26, in paragraph (a), the introductory text would be amended by removing the word ''and'' and by adding the words '', U.S. S. Enteritidis Monitored, and U.S. S. Enteritidis Clean'' immediately before the word ''classifications''.

21. In § 147.43, the introductory text of paragraph (a) would be amended by adding two new sentences before the first sentence to read as set forth below; by removing the words ''the Assistant Secretary of Agriculture for Marketing and Inspection Services, or his/her designee,''; and by removing the words ''and who shall be designated as vice chairperson,''.

§ 147.43 General Conference Committee.

(a) The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. A representative of the Animal and Plant Health Inspection Service will serve as Executive Secretary and will provide the necessary staff support for the Committee. * * *

* * * * *

Done in Washington, DC, this 28th day of June 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–16677 Filed 7–6–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 95–16]

RIN 1557–AB48

Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to revise its rules governing real estate lending. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The proposal would modernize and clarify the real estate lending rules, reduce unnecessary regulatory burdens, and, consistent with statutory requirements, impose regulatory requirements only where needed to address safety and soundness concerns or accomplish other statutory responsibilities of the OCC.

DATES: Comments must be received by September 5, 1995.

ADDRESSES: Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 250 E Street SW., Washington, DC 20219, Attention: Docket No. 95–16. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Mark Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090; Laura Goldman, Attorney, Bank Activities and Structure, (202) 874–5300; Thomas Watson, National Bank Examiner, Credit and Management Policy, (202) 874–5170; Frank R. Carbone, National Bank Examiner, Credit and Management Policy, (202) 874–5170; or Roland G. Ullrich, National Bank Examiner, Consumer and Fiduciary Compliance, (202) 874–4866.

SUPPLEMENTARY INFORMATION:

Background

Summary of Regulation Review Program

The OCC proposes to revise 12 CFR part 34 as another component of its Regulation Review Program (Program). The goal of the Program is to review all of the OCC's rules and to eliminate provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another goal of the Program is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

The OCC intends for this proposal to reduce regulatory costs and other burdens on national banks by eliminating regulatory requirements that are neither essential to maintaining the safety and soundness of national banks nor needed to accomplish the OCC's statutory responsibilities. The proposal also would simplify and clarify the OCC's real estate lending regulations.

Discussion

Part 34 consists of the following five subparts: Subpart A—General; Subpart B—Adjustable-Rate Mortgages (ARMs); Subpart C—Appraisals; Subpart D—Real Estate Lending Standards; and Subpart E—Other Real Estate Owned (OREO). The OCC proposes to amend subparts A, B, and E. The OCC is not proposing to amend subpart C or D at this time because they recently were adopted on an interagency basis and the OCC wishes to gather additional information on their effectiveness before deciding whether to recommend an interagency effort to revise those subparts. Nevertheless, commenters are welcome to include comments on subparts C and D in addition to their comments on this proposal.

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) requires the OCC to conduct a review of, among other things, the standards adopted by the OCC for real estate lending by national banks. These standards are set forth in subpart D of part 34. Pursuant to section 303, the OCC is to ''consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities.'' *Id.* The OCC welcomes comments on the impact that the standards, including the Guidelines for Real Estate Lending set forth at appendix A to subpart D, are having on the availability of the types of credit and communities noted previously.

Most of the proposed changes in subparts A, B, and E clarify and simplify the current rule. The proposal removes provisions that merely repeat statutes or that are otherwise redundant, and reorders or renumbers certain other provisions to improve clarity. The proposal also adds a new provision to summarize the OCC's general approach to questions of Federal preemption of State laws governing real estate. (That provision does *not* expand the scope of State law preemption beyond what appears in the current rule.) Finally, the proposal amends the provisions governing disposition of leases that are treated as OREO to suspend the running of the divestiture period under certain circumstances.

The following discussion identifies and explains material proposed changes to part 34. The OCC invites general comments on all aspects of the proposed regulation as well as specific comments on the proposed changes. The OCC also welcomes any additional comments relevant to this proposal.

A derivation table comparing the sections of proposed part 34 to those of current part 34 follows this section of the preamble.

Subpart A—General

Purpose and Scope (Section 34.1)

A national bank may make real estate loans under the authority provided in 12 U.S.C. 371 and 12 U.S.C. 24(Seventh). Part 34 currently identifies (in § 34.3) loans that are not considered ''real estate loans'' for purposes of 12 U.S.C. 371 but which national banks nevertheless may make pursuant to 12 U.S.C. 24(Seventh). The proposal removes the list in § 34.3 because it is unnecessary (*see* discussion of ''Loans not constituting real estate loans,'' *infra*). The proposal also eliminates cross-references in § 34.1 to that list. However, since current paragraphs (f) and (g) of § 34.3 contain an exception to the regulation's scope, the proposal incorporates the substance of those provisions into the proposed ''Scope'' section of the revised regulation.

The proposal also relocates the text that currently appears in § 34.1(a), authorizing national banks to engage in real estate-related transactions, to proposed § 34.3. This conforms the order of subpart A of part 34 to that of other OCC rules. Finally, the proposal sets forth a statement of the purpose of part 34.

Definitions (Proposed Section 34.2)

The proposal places definitions used in subpart A in one location. The definition of ''due-on-sale clause'' is moved from current § 34.4 to proposed § 34.2 without any change to the definition's substance. The proposal adds definitions of ''State'' and ''State law limitations'' to avoid restating of the full scope of preemption in every section that refers to preemption. These definitions effect no substantive changes.

General Rule (Proposed Section 34.3)

Current § 34.1(a) sets forth the general rule authorizing national banks to engage in real estate lending and related transactions. The proposal relocates this general rule to a new section to conform the order of subpart A of part 34 to that followed in other OCC regulations.

Loans Not Constituting Real Estate Loans (Current § 34.3—Removed)

Current § 34.3 lists several types of loans that are not considered real estate loans for purposes of part 34, but are permissible for national banks under 12 U.S.C. 24(Seventh). The current provision is confusing and unnecessary. Therefore, the proposal removes § 34.3 in its entirety.

After 12 U.S.C. 371 was amended in 1982, the OCC added the list in question to part 34 (48 FR 40701 (September 9, 1983)) to insure that any restrictions resulting from further amendment of 12 U.S.C. 371 would not apply to the types of loans identified as permissible pursuant to 12 U.S.C. 24(Seventh). If Congress amends 12 U.S.C. 371 again, the OCC will consider whether it is necessary to amend part 34 to identify types of loans that are deemed by the OCC not to be real estate loans for purposes of that section.

Applicability of Law (Proposed § 34.4)

The current rule states specific areas where Federal law preempts State law governing real estate lending by national banks. The proposal retains this statement of preemption in order to provide continued guidance about specific areas where Federal law preempts State law. However, the proposal removes the unnecessary reminder, found at current § 34.2(b), that national banks must comply with applicable laws.

Proposed § 34.4(b) adds a general statement of the OCC's position with respect to preemption to clarify that the list of areas where State law is preempted, carried over from the current rule, is not exhaustive. The proposed rule clarifies that the OCC will apply traditional principles of Federal preemption when determining whether a State law affecting real estate lending is preempted. Under these principles, State laws apply to national banks unless the State law expressly or impliedly conflicts with Federal law, the State law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law, or Federal law is so comprehensive as to evidence a Congressional intent to occupy a given field.[1]

Due-On-Sale Clauses (Proposed Section 34.5)

Current § 34.4 authorizes a national bank to make or acquire a loan secured by a lien on real property that includes a due-on-sale clause, and preempts State law to the contrary. The rule also states that due-on-sale clauses in transfers described in 12 U.S.C. 1701j-3(d) are not enforceable.

The OCC proposes to modify this section to improve clarity and to remove unnecessary restatements of statutory provisions. The proposed descriptions of the terms ''real property'' and ''lender'' remove provisions that merely restate the statute. However, the proposal intends no change in the substance of those descriptions.

Subpart B—ARMs

The proposal renumbers current sections in subpart B, beginning with proposed § 34.20, in order to permit future additions to subpart A with minimum disruption.

Definitions (proposed Section 34.20)

Current § 34.5 contains definitions of ''adjustable-rate mortgage loan'' (ARM loan) and ''consumer credit.'' Proposed § 34.20 amends the definition of ''ARM loan'' by deleting the provisions, found in current § 34.5(a)(2), that exempt fixed-rate extensions of credit that are payable either on demand or without any interim amortization. Earlier OCC definitions of ''ARM loan'' included certain fixed-rate loan transactions, unless a lender gave the disclosures required to exempt the transaction from the regulation's coverage. (*See, e.g.,* 48 FR 9506 (March 7, 1983).) The OCC amended its rule in 1988 (53 FR 7885 (March 11, 1988)) to remove those disclosure requirements, and clarified that the fixed-rate extensions in question would not be considered to be ARM loans. While the express exemptions were helpful when the disclosure requirement was removed in 1988, such exemptions no longer are necessary.

The OCC seeks comment on whether it remains necessary or appropriate to exempt from the definition of ''ARM loan'' fixed-rate loans that are payable at the end of a term that, when added to all terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule. This exemption is similar, but not identical, to the treatment of variable-rate transactions in Regulation Z (Reg. Z, 12 CFR part 226) of the Board of Governors of the Federal Reserve System (the Federal Reserve). For instance, a loan that a bank has guaranteed to renew for a total period that is shorter than the life of the mortgage is not an ARM loan under part 34. (*See* 12 CFR 34.5(a)(2)(ii).) It is, however, a variable-rate transaction under Reg. Z. (*See* Commentary to § 226.17(c)(1), Comment 11, first bullet.) This distinction requires lenders to understand and apply two different standards, depending on the purpose being served.

The practical effect of this distinction is that national banks making balloon notes that are renewable for a total period shorter than the amortization schedule do not have to use an independent index in adjusting the interest rate on such loans. The distinction also raises the issue of whether banks find it unnecessarily burdensome to comply with the different rules.

Whatever burden that is created by the current difference could be eliminated by deleting all current exemptions from the OCC's definition of ARM loan and clarifying that a balloon note that a bank guarantees to renew will be treated as an ARM loan if the bank may adjust the interest rate upon renewal. This would result, however, in more loans being considered to be ARM loans, thereby increasing the number of loans for which a bank would have to use an index beyond the bank's control.

The OCC seeks comment on (1) whether the current difference between part 34 and Reg. Z poses an unnecessary burden, and (2) whether banks favor amending part 34 to eliminate the difference, notwithstanding that such approach would result in more loans being subject to the requirement that a bank use an index beyond its control.

In addition to the changes noted, the proposal makes stylistic changes to the definition of ''ARM loan.'' The proposal also deletes the definition of ''consumer credit,'' because other changes make the definition unnecessary (*see* discussion of ''Rate changes (current § 34.8)'' and ''Disclosure (current § 34.10)''). In order to consolidate all definitions used in subpart B, the proposal relocates to proposed § 34.20 the definitions of ''affiliate'' and ''subsidiary'' currently found in § 34.6(b). Finally, the proposal uses the term ''renewal'' instead of ''refinance'' as that term is used in current § 34.5(a)(2) in order to avoid creating the impression that the OCC rule applies to refinancings as that term is narrowly defined in Reg. Z.

General Rule (Proposed Section 34.21)

Current § 34.6 provides that national banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in ARM loans, notwithstanding any State law to the contrary. National banks may purchase or participate in ARM loans that were not made in accordance with the OCC's regulations, except that loans purchased from an affiliate or subsidiary must comply with part 34. The proposal makes only minor changes to simplify the general rule.

Index (Proposed Section 34.22)

Current § 34.7 requires ARM loans that are subject to 12 CFR 226.19(b) to specify an index to which changes in the interest rate shall be linked. The

[1] The Supreme Court's most recent discussion of the principles of Federal preemption may be found in *Gade* v. *National Solid Wastes Management Ass'n,* 120 L. Ed. 2d 73 (1992), in which the Court stated:

As both the majority and dissent acknowledge, we have identified three circumstances in which a federal statute pre-empts state law: First, Congress can adopt express language defining the existence and scope of pre-emption. Second, state law is pre-empted where Congress creates a scheme of federal regulation so pervasive as to leave no room for supplementary state regulation. And third, ''state law is pre-empted to the extent that it actually conflicts with federal law.'' This third form of pre-emption, so-called actual conflict pre-emption, occurs either ''where it is impossible for a private party to comply with both state and federal requirements . . . or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' '' 120 L. Ed. 2d at 91 (Kennedy, J., concurring; citations omitted). The plurality and dissenting opinions in *Gade* contain essentially the same formulation. *See id.* at 84 and 95, respectively.

index is to be readily available to, and verifiable by, the borrower. It also must be beyond the control of the lending bank. Proposed § 34.22 makes no changes to the substance of current § 34.7.

Rate changes (Current Section 34.8)

Current § 34.8 sets forth the limitation found in section 1204 of the Competitive Equality Banking Act of 1987 (CEBA), Pub. L. 100–86, 100 Stat. 552 (12 U.S.C. 3806(a)), which requires a consumer credit ARM loan to include a limitation on the maximum rate of interest that may apply during the term of the loan. The proposal removes § 34.8 because it is an unnecessary restatement of the statute. Moreover, CEBA vests rulemaking authority with the Federal Reserve, which has implemented section 1204 of CEBA at 12 CFR 226.30.

Prepayment Fees (Proposed Section 34.23)

Current § 34.9 provides that national banks may impose fees for prepayments of ARM loans, notwithstanding any State law to the contrary. The proposal makes no substantive change to this section.

Disclosure (Current Section 34.10)

This section requires a national bank that offers consumer ARM loans to provide the disclosures required by the Truth-in-Lending Act (15 U.S.C. 1601, et seq.), as implemented by the Federal Reserve in Reg. Z.

Earlier versions of the OCC rule regarding disclosure requirements made this statement appropriate at one time. Previously, the OCC's rule required specific ARM loan disclosures that were similar to that now required by Reg. Z. *See, e.g.,* 48 FR 9506 (March 7, 1983); 46 FR 18943 (March 27, 1981). In 1987, the OCC proposed to amend its rule to eliminate those disclosure requirements since they were redundant in light of Reg. Z, but also proposed to include a reminder to national banks that documents evidencing ARM loans, as that term was defined in the proposal, still were to contain the Reg. Z disclosures. 52 FR 36958 (October 2, 1987). Ultimately, this proposal was adopted (53 FR 7885 (March 11, 1988)), thereby eliminating overlap between the two regulations.

The proposed rule that was promulgated in 1987 defined ''ARM loan'' in a way that made it appropriate to clarify that only ARM loans to consumers needed to comply with the disclosure requirements set forth in Reg. Z. The 1987 proposal defined ''ARM loan'' as applying to an ''extension of consumer credit,'' which raised questions concerning the permissibility under part 34 of making ARM loans to businesses. To address this concern, the final rule adopted in 1988 used the definition of ''ARM loan'' that appears in the current regulation and clarified in § 34.10 that the disclosures required under Reg. Z must be provided only to consumers in ARM loan transactions.

The OCC believes that the reminder to comply with Reg. Z disclosures when making a consumer ARM loan was appropriate when the OCC-imposed disclosure requirements were removed, but now is unnecessary. Accordingly, the proposal removes this section in its entirety. The proposal also removes the term ''consumer credit,'' since it was used only in § 34.10.

Nonfederally Chartered Commercial Banks (Proposed Section 34.24)

Section 807(b) of the Garn-St Germain Act (Pub. L. 97–320, 96 Stat. 1545 (12 U.S.C. 3801 note)) requires the OCC to identify those provisions of its ARM regulation that are inappropriate for nonfederally chartered banks. In implementing section 807(b), the OCC determined that all of the provisions of subpart B were appropriate, and so stated in current § 34.11. Proposed § 34.25 retains this statement in order to comply with the statute, and removes certain unnecessary citations to statutory authority.

Transition Rule (Proposed Section 34.25)

Current § 34.12 provides that national banks were authorized to make or administer loans during a ''window period'' beginning on the date the current rule was adopted (March 11, 1988) and ending October 1, 1988, if the loans complied with the OCC rules in effect before the March 11, 1988 amendment. Following October 1, 1988, all ARM loans have been required to comply with part 34, as revised.

The proposed changes remove what are now unnecessary references to the window period. The proposal retains the remainder of this section to assist the reader who wishes to determine if a given loan complied with applicable laws in effect when the loan was made. Commenters are requested to address whether retention of this provision is still useful.

Subpart C—Appraisals

The OCC is not proposing any changes to the rules governing the use of appraisals.

Subpart D—Real Estate Lending Standards

The OCC is not proposing any changes to the real estate lending standards.

Subpart E—OREO

Definitions (Section 34.81)

Current § 34.81 contains the definitions used in subpart E. The proposal makes two changes to these definitions in addition to stylistic edits. First, proposed § 34.81 defines OREO to include only ''debts previously contracted'' (DPC) real estate and former banking premises. The proposal removes the term ''covered transactions real estate'' from the definition of OREO, thereby rendering the definition of covered transactions real estate unnecessary. Second, the proposal removes the term ''transaction value'' and corresponding definition. These proposed changes are addressed in order, below.

The current rule defines covered transactions real estate as DPC property or former banking premises that a national bank is in the process of selling in accordance with current § 34.83(a)(6) (*i.e.,* receiving at least 10 percent of the property's sales price through cash, principal and interest payments, and/or private mortgage insurance). However, there is no special rule for the divestiture or disposition of covered transactions real estate. The regulation treats such real estate as OREO, and imposes the same requirements as are imposed on other forms of OREO. Accordingly, there is no reason to identify covered transaction real estate as a special class of OREO property.

This proposed change to the definition of OREO is not intended to change the ability of national banks to dispose of OREO through the means specified in current § 34.83(a)(6). Rather, it is intended simply to remove a term that is unnecessary and potentially confusing.

The proposal also removes the term ''transaction value'' because it, too, is unnecessary and potentially confusing. Current subpart E of part 34 defines transaction value as ''the recorded investment amount,'' a term that also is defined. However, subpart C defines ''transaction value'' differently, creating potential confusion. Since ''transaction value'' is used only once in part 34 (in current § 34.84(a)(1)(ii)) outside of the current definition section in subpart E, and since the entire substance of that term's definition is ''the recorded investment amount,'' the OCC proposes to replace ''transaction value'' with

''recorded investment amount'' in § 34.85(a)(1)(ii).

Holding Period (Section 34.82)

Current § 34.82 restates those provisions of the statute that govern how long a national bank may hold OREO. It also identifies when the holding period begins, and clarifies that a statutory redemption period imposed by State law will delay the beginning of when the holding period runs.

Proposed § 34.82 is similar to current § 34.82. The proposed rule clarifies, in § 34.82(b)(2), that the holding period begins on the date that a national bank abandons former banking premises without relocating to another site (such as might happen when a branch is closed). The proposed rule also makes changes to improve clarity and to remove provisions that are redundant in light of 12 U.S.C. 29. The proposal relocates the requirement that a national bank dispose of OREO when prudent judgment dictates from § 34.83 (which addresses the *method* of disposition) to § 34.82 (which addresses *timing* of disposition). Finally, proposed § 34.82 retains a statement regarding a bank's obligation to dispose of OREO. This statement clarifies that OREO, as defined in the regulation, is subject to the divestiture provisions. Without such a statement, questions might remain concerning whether the five-year holding period (and any extension thereof) would be available for the disposition of certain types of properties (such as former banking premises that become OREO).

Disposition of Real Estate (Section 34.83)

Currently, § 34.83(a)(5) permits disposition of leases only through assignment or a ''coterminous sublease'' (*i.e.*, a lease with the same duration as the remainder of the master lease). Many national banks hold long-term leases and are unable either to assign them or to find a coterminous sublessee, notwithstanding the bank's best efforts to do so. As industry consolidation and technological advances further reduce the need for branch office space, this problem likely will become more severe.

A bank has the option of entering into non-coterminous subleases in order to minimize financial losses stemming from a long-term lease. However, the OCC currently does not recognize the entering into a non-coterminous sublease as a ''disposition'' of the OREO for purposes of part 34, thus resulting in a bank being cited for a violation of law even though the bank is attempting in good faith to comply. To address this problem, proposed § 34.83(a)(3) permits the divestiture period to be suspended for the duration of a non-coterminous sublease.

The following example illustrates how this change would work. Assume that a national bank holds a 30-year lease and, after one year from the date the lease becomes OREO, the bank finds a sublessee willing to sublease the property for ten years. At the end of that 10-year sublease, the bank, under the proposed rule, would have four years remaining in the initial 5-year divestiture period within which to assign the lease or find a sublessee. If the bank enters into another non-coterminous sublease, then, at the expiration of that sublease, the bank would have the unused portion of the divestiture period in which to dispose of the property or enter into another sublease.

The OCC believes that this proposal is consistent with 12 U.S.C. 29. The statute precludes the ''possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it,'' for a period exceeding five years (or ten years, if the initial period is extended by the OCC). This mandatory divestiture provision is silent with respect to leases. The OCC previously concluded that it is appropriate, for safety and soundness reasons, to treat leases as OREO and require their disposition within the same divestiture period as applies to other types of OREO property. Experience has shown, however, that implementation of 12 U.S.C. 29 can produce an unnecessarily harsh result when the property in question is a long-term lease. The OCC has reexamined its current position and has determined that when property is leased pursuant to a bona fide lease, the element of ''possession'' that is key to the limitations of 12 U.S.C. 29 may not be present. Therefore, the OCC believes that when a bank leases premises pursuant to a bona fide lease, 12 U.S.C. 29 provides a basis to take a more flexible approach to leaseholds that become OREO.

This option would be available, however, only if the bank in question acts in good faith in acquiring the lease. The OCC remains concerned about banks speculating in real estate, and, therefore, would retain the discretion under the proposed rule to require a bank to take immediate steps to divest a lease if the OCC determines that the bank is engaged in speculation. Thus, for instance, if a bank originates several long-term leases ostensibly for future bank use but soon thereafter converts the leases to OREO and subleases them to non-coterminous sublessees, the OCC would have the right under the proposed rule to deem the divestiture period not to have been suspended. In such a situation, the bank also risks being cited for acquiring real estate in violation of 12 U.S.C. 29.

The OCC seeks comment on the appropriateness of permitting the suspension of the divestiture period in the manner described above.

The proposal makes numerous stylistic changes to § 34.83 that simplify the current regulation and eliminate unnecessary repetition. The proposal modifies § 34.83(b) to clarify that disposition efforts must be ongoing throughout the disposition period. Finally, as previously noted, the proposal relocates the provision in current § 34.83 (requiring disposition when prudent judgment dictates) to proposed § 34.82.

Future Bank Expansion (Proposed Section 34.84)

Proposed § 34.84 creates a new section for the OCC's rule on future bank expansion that currently appears as part of § 34.83. The OCC intends for this new section to make the future bank expansion rule easier to locate.

Appraisal Requirements (Proposed Section 34.85)

Current § 34.84 provides that a national bank should obtain either an appraisal or evaluation, as appropriate under 12 CFR part 34, subpart C, when real estate is transferred to OREO or when OREO is sold. The current rule provides an exception to this requirement if a national bank already has a valid appraisal or evaluation for the property in question. Banks are to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice.

The proposal makes no substantive change to this section. As noted above in the discussion of the definition section of subpart E, the proposal removes the term ''transaction value'' and uses ''recorded investment amount'' in lieu thereof.

Additional Expenditures and Notification (Proposed Section 34.86)

The current rule, which is set out in § 34.85, specifies that national banks are to notify the OCC at least 30 days prior to implementing a development or improvement plan for OREO when the estimated cost of the plan exceeds a specified threshold. The rule makes exceptions to this notice requirement for re-fitting existing buildings and for normal repairs. The rule also specifies that national banks may make ''prudent advances'' to complete a project

involving OREO if the advances are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount, and if they are not made for the purpose of speculating in real estate. The remaining provisions of § 34.86 clarify the procedures to be followed under this subsection.

The proposal moves the exceptions to the notice requirements to proposed § 34.85(b)(1). No change in the substance of the procedures is proposed, however. The proposal rewords current § 34.85(b)(3) (proposed new § 34.86(b)(3)) to simplify the procedures for informing banks of the OCC's decision regarding proposed additional expenditures.

The OCC also seeks comment on whether the current standard regarding completion of OREO development or improvement projects provides sufficient guidance, or whether a different standard would be appropriate for additional expenditures made in connection with OREO development or improvement.

Accounting Treatment (Proposed Section 34.87)

The current rule specifies that OREO reporting should conform to instructions in the Consolidated Report of Condition and Income. The proposal retains this provision.

Application (Current Section 34.88)

Current § 34.88 provides that subpart E is applicable to all OREO held by a national bank, including OREO in existence since September 17, 1993. The proposal removes this provision since it is unnecessary and potentially confusing.

The following table directs readers to the provision(s) of the current regulation, if any, upon which the proposed provision is based, and identifies generally the action taken.

DERIVATION TABLE

Revised section	Original section	Comments
34.1(a)		Added.
34.1(b)	34.1(b)	Modified.
34.2(a)	34.4(a)	Modified.
34.2(b)		Added.
34.2(c)		Added.
34.3	34.1(a)	Modified.
34.4(a)	34.2(a)	Modified.
34.4(b)		Added.
	34.2(b)	Removed.
	34.3	Removed.
34.5	34.4(a)	Modified.
34.5	34.4(b)	Modified.
34.20(a)	34.5(a)	Modified.
34.20(b)	34.6(b)	No change.
34.20(c)	34.6(b)	No change.
34.21(a)	34.6(a)	Modified.
34.21(b)	34.6(b)	Modified.
34.22	34.7	Modified.
	34.8	Removed.
34.23	34.9	Modified.
	34.10	Removed.
34.24	34.11	Modified.
34.25	34.12	Modified.
34.81(a)		Added.
	34.81(b)	Removed.
34.81(b)	34.81(c)	No change.
34.81(c)	34.81(d)	No change.
34.81(d)	34.81(e)	No change.
34.81(e)	34.81(a)	Modified.
34.81(f)	34.81(f)	No change.
	34.81(g)	Removed.
34.82(a)	34.82(a)	Modified.
34.82(b)	34.82(b)	Modified.
34.82(c)	34.82(c)	Modified.
34.82(a)	34.83(a)	Modified.
34.83(a)(1)(i)	34.83(a)(1)	Modified.
34.83(a)(1)(ii)	34.83(a)(2)	Modified.
34.83(a)(1)(iii)	34.83(a)(3)	Modified.
34.83(a)(2)	34.83(a)(4)	Modified.
34.83(a)(3)	34.83(a)(5)	Modified.
34.83(a)(4)	34.83(a)(6)	Modified.
34.83(b)	34.83(b)	Modified.
34.84	34.83(c)	No change.
34.85(a)	34.84(a)	Modified.
34.85(b)	34.84(b)	Modified.
34.85(c)	34.84(c)	Modified.
34.86(a)(1)	34.85(a)(2)(i)	No change.
34.86(a)(2)	34.85(a)(2)(ii)	No change.
34.86(a)(3)		Added.
34.86(b)	34.85(b)	Modified.
34.86(b)(1)	34.85(a)(1)	Modified.

DERIVATION TABLE—Continued

Revised section	Original section	Comments
34.87	34.86	No change.
	34.87	Removed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying current regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a Notice of Proposed Rulemaking (NPRM) likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating an NPRM. The OCC has determined that the rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the rule will reduce unnecessary burdens on national banks seeking to engage in real estate lending.

List of Subjects in 12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to amend part 34 of chapter I of title 12 of the Code of Federal Regulations as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 29, 93a, 371, 1701j-3, 1828(o), and 3331 *et seq.*

2. Part 34 is amended by revising subparts A, B, and E to read as follows:

Subpart A—General

Sec.
34.1 Purpose and scope.
34.2 Definitions.
34.3 General rule.
34.4 Applicability of State law.
34.5 Due-on-sale clauses.

Subpart B—Adjustable-Rate Mortgages

34.20 Definitions.
34.21 General rule.
34.22 Index.
34.23 Prepayment fees.
34.24 Nonfederally chartered commercial banks.
34.25 Transition rule.

Subpart C—Appraisals

* * * * *

Subpart D—Real Estate Lending Standards

* * * * *

Subpart E—Other Real Estate Owned

34.81 Definitions.
34.82 Holding period.
34.83 Disposition of real estate.
34.84 Future bank expansion.
34.85 Appraisal requirements.
34.86 Additional expenditures and notification.
34.87 Accounting treatment.

Subpart A—General

§ 34.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to set forth standards for real estate-related lending and associated activities by national banks.

(b) *Scope.* For the purposes of 12 U.S.C. 371 and subparts A and B of this part, loans secured by liens on interests in real estate include loans made upon the security of condominiums, leaseholds, cooperatives, forest tracts, land sales contracts, and construction project loans. Construction project loans are not subject to subparts A and B, however, if they have a maturity not exceeding 60 months and are made to finance the construction of either:

(1) A building where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building; or

(2) A residential or farm building.

§ 34.2 Definitions.

(a) *Due-on-sale clause* means any clause that gives the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise.

(b) *State* means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam.

(c) *State law limitations* means any State statute, regulation, ruling, or order of any State agency, or judicial decision regarding a State statute, regulation, ruling, or order.

§ 34.3 General rule.

A national bank may make, arrange, purchase, or sell loans or extensions of credit, or interests therein, that are secured by liens on, or interests in, real estate, subject to terms, conditions, and limitations prescribed by the Comptroller of the Currency by order, rule, or regulation.

§ 34.4 Applicability of State law.

(a) *Specific preemption.* National banks may make real estate loans under 12 U.S.C. 371 and § 34.3 without regard to State law limitations as to:

(1) The amount of a loan in relation to the appraised value of the real estate;

(2) The schedule for the repayment of principal and interest;

(3) The term to maturity of the loan;

(4) The aggregate amount of funds that may be loaned upon the security of real estate; and

(5) The covenants and restrictions that must be contained in a lease to qualify the leasehold as acceptable security for a real estate loan.

(b) *General standards.* The OCC will apply recognized principles of Federal preemption in considering whether State laws apply to other real estate lending activities of national banks.

§ 34.5 Due-on-sale clauses.

A national bank may make or acquire a loan or interest therein, secured by a

lien on real property, that includes a due-on-sale clause. Except as set forth in 12 U.S.C. 1701j–3(d) (which contains a list of transactions in which due-on-sale clauses may not be enforced), due-on-sale clauses in loans, whenever originated, shall be valid and enforceable for transfers of the secured property occurring after December 8, 1983, notwithstanding any State law limitations to the contrary. For the purposes of this section, the term real property includes residential dwellings such as condominium units, cooperative housing units, and residential manufactured homes, and the term lender means a government agency or person, including a corporation, partnership, trust, or association, making a real property loan, or any assignee or transferee, in whole or in part, of that person or agency.

Subpart B—Adjustable-Rate Mortgages

§ 34.20 Definitions.

(a) *Adjustable-rate mortgage (ARM) loan* means an extension of credit made to finance or refinance the purchase of, and secured by a lien on, a one-to-four family dwelling, including a condominium unit, cooperative housing unit, or residential manufactured home, where the lender, pursuant to an agreement with the borrower, may adjust the rate of interest from time to time. This term does not apply to fixed-rate extensions of credit that are payable at the end of a term that, when added to any terms for which the bank has promised to renew the loan, is shorter than the term of the amortization schedule.

(b) *Affiliate* has the same meaning as in 12 U.S.C. 371c.

(c) *Subsidiary* has the same meaning as in 12 U.S.C. 371c.

§ 34.21 General rule.

(a) *Authorization.* National banks and their subsidiaries may make, sell, purchase, participate in, or otherwise deal in ARM loans and interests therein without regard to any State law limitations on those activities.

(b) *Purchase of loans not in compliance.* National banks may purchase or participate in ARM loans that were not made in accordance with this part, except that loans purchased, in whole or in part, from an affiliate or subsidiary must comply with this part.

§ 34.22 Index.

If a national bank makes an ARM loan to which 12 CFR 226.19(b) applies (*i.e.*, the annual percentage rate of a loan may increase after consummation, the term exceeds one year, and the consumer's principal dwelling secures the indebtedness), the loan documents must specify an index to which changes in the interest rate charged will be linked. This index must be readily available to, and verifiable by, the borrower and beyond the control of the bank. A national bank may use as an index any measure of market rates of interest that meets these requirements. The index may be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period.

§ 34.23 Prepayment fees.

A national bank offering or purchasing ARM loans may impose fees for prepayments notwithstanding any State law prohibitions of, or limitations on, those fees. For the purpose of this part, prepayments do not include:

(a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or

(b) Principal payments, in excess of those necessary to retire the outstanding debt over the remaining loan term at the then-current interest rate, that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.24 Nonfederally chartered commercial banks.

Pursuant to 12 U.S.C. 3803(a), nonfederally chartered commercial banks may make ARM loans in accordance with the provisions of this subpart.

§ 34.25 Transition rule.

If, on October 1, 1988, a national bank had made a loan or binding commitment to lend under an ARM loan program that complied with the requirements of 12 CFR part 29 in effect prior to October 1, 1988 (See 12 CFR Parts 1 to 199, revised as of January 1, 1988) but would have violated any of the provisions of this subpart, the national bank may continue to administer the loan or binding commitment to lend in accordance with that loan program. All ARM loans or binding commitments to make ARM loans that a national bank entered into after October 1, 1988, must comply with all provisions of this subpart.

Subpart C—Appraisals

* * * * *

Subpart D—Real Estate Lending Standards

* * * * *

Subpart E—Other Real Estate Owned

§ 34.81 Definitions.

(a) *Capital* means:

(1) A bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the OCC's Minimum Capital Ratios in appendix A of 12 CFR part 3; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under 12 CFR part 3.

(b) *Debts previously contracted (DPC) real estate* means real estate (including capitalized and operating leases) acquired by a national bank through any means in full or partial satisfaction of a debt previously contracted.

(c) *Former banking premises* means real estate (including capitalized and operating leases) for which banking use no longer is contemplated. This includes real estate originally acquired for future expansion that no longer will be used for expansion or other banking purposes.

(d) *Market value* means the value determined in accordance with subpart C of this part.

(e) *Other real estate owned (OREO)* means:

(1) DPC real estate; and

(2) Former banking premises.

(f) *Recorded investment amount* means:

(1) For loans, the recorded loan balance, as determined by generally accepted accounting principles; and

(2) For former banking premises, the net book value.

§ 34.82 Holding period.

(a) *Holding period for OREO.* A national bank shall dispose of OREO at any time that prudent judgment dictates, but not later than the end of the holding period (or an extension thereof) permitted by 12 U.S.C. 29.

(b) *Commencement of holding period.* The holding period begins on the date that:

(1) Ownership of the property is originally transferred to a national bank;

(2) A bank completes relocation from former banking premises to new banking premises or ceases to use the former banking premises without relocating; or

(3) A bank decides not to use real estate acquired for future bank expansion.

(c) *Effect of statutory redemption period.* For DPC real estate that is subject to a redemption period imposed under state law, the holding period begins at the expiration of that redemption period.

§ 34.83 Disposition of real estate.

(a) *Disposition.* A national bank may comply with its obligation to dispose of real estate under 12 U.S.C. 29 in the following ways:

(1) With respect to OREO in general:

(i) By entering into a transaction that is a sale under generally accepted accounting principles;

(ii) By entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a Federally-sponsored instrumentality that purchases loans; or

(iii) By selling the property pursuant to a land contract or a contract for deed;

(2) With respect to DPC real estate, by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate;

(3) With respect to a capitalized or operating lease, by obtaining an assignment or a coterminous sublease. If a national bank enters into a sublease that is not coterminous, the period during which the master lease must be divested will be suspended for the duration of the sublease, and will begin running again upon termination of the sublease. Should the OCC determine that a bank has entered into a lease for the purpose of real estate speculation in violation of 12 U.S.C. 29 and this part, the OCC will take appropriate measures to address the violation, including requiring the bank to take immediate steps to divest the lease; and

(4) With respect to a transaction that does not qualify as a disposition under paragraphs (a) (1) through (3) of this section, by receiving or accumulating from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totalling at least 10 percent of the sales price, as measured in accordance with generally accepted accounting principles.

(b) *Disposition efforts and documentation.* The national bank shall make diligent and ongoing efforts to dispose of each parcel of OREO, and shall maintain documentation adequate to reflect those efforts.

§ 34.84 Future bank expansion.

A national bank normally should use real estate acquired for future bank expansion within five years. After holding such real estate for one year, the bank shall state, by resolution of the board of directors or an appropriately authorized bank official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by national bank examiners.

§ 34.85 Appraisal requirements.

(a) *In general.* (1) Upon transfer to OREO, the national bank shall substantiate the parcel's market value by obtaining either:

(i) An appraisal in accordance with subpart C of this part; or

(ii) An appropriate evaluation when the recorded investment amount is equal to or less than the threshold amount in subpart C of this part.

(2) The national bank shall develop a prudent real estate collateral evaluation policy that allows the bank to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice.

(b) *Exception.* If a national bank obtained, in accordance with subpart C of this part, a valid appraisal or an appropriate evaluation in connection with a real estate loan, then the bank need not obtain another appraisal or evaluation when it acquires ownership of the property. However, the bank shall continue to follow the prudent real estate collateral evaluation policy required in paragraph (a)(2) of this section.

(c) *Sales of OREO.* A national bank need not obtain a new appraisal or evaluation when selling OREO if the sale is consummated based on a valid appraisal or an appropriate evaluation.

§ 34.86 Additional expenditures and notification.

(a) *Additional expenditures on OREO.* For OREO that is a development or improvement project, a national bank may make advances to complete the project if the advances:

(1) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount;

(2) Are not made for the purpose of speculation in real estate; and

(3) Are consistent with safe and sound banking practices.

(b) *Notification procedures.* (1) A national bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO when the sum of the plan's estimated cost, the bank's current recorded investment amount, and any unpaid prior liens on the property exceeds 10 percent of the bank's capital. A national bank need notify the OCC under this paragraph only once. A national bank need not notify the OCC that the bank intends to re-fit an existing building for new tenants or to make normal repairs and incur maintenance costs to protect the value of the collateral.

(2) The required notification must demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraph (a) of this section.

(3) Unless informed otherwise, the bank may implement the proposed plan on the thirty-first day (or sooner, if notified by the OCC) following receipt by the OCC of the bank's notification, subject to any conditions imposed by the OCC.

§ 34.87 Accounting treatment.

OREO, and sales of OREO, are to be accounted for in accordance with the Instructions for the preparation of the Consolidated Reports of Condition and Income.

Dated: June 9, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI7–1–5812; A–1–FRL–5226–3]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island Non-CTG RACT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Rhode Island were received by the Environmental Protection Agency (EPA) on January 25, 1993 and November 1, 1994. The intended effect of the revisions was to change two regulations, both of which require the implementation of reasonably available control technology (RACT) for certain sources of volatile organic compounds (VOCs), as required by the Clean Air Act, as amended in 1990 (the Act). The EPA has evaluated these modifications to Rhode Island's regulations and by this notice is proposing to approve one of the revised regulations into the SIP. EPA is also proposing a limited approval/limited disapproval of one of the revised regulations. This action is being taken under Section 110(k)(3) of the Act.

DATES: Comments must be received on or before August 7, 1995. Public comments on this document are requested and will be considered before taking final action on this SIP revision.